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New Orleans, LA 70112

9 April, 2020

FOIA Officer, Region 4 USEPA  
U.S. EPA, Region 4  
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)  
Atlanta, GA 30303-8960  
(404) 562-9891  
[r4foia@epa.gov](mailto:r4foia@epa.gov)

**RE: Freedom of Information Act Request (Expedited) for Documents related to USEPA Ethylene Oxide presentations in South Carolina**

To Whom it May Concern,

I am writing on behalf of the HealthyGulf and allied organizations.<sup>1</sup> This is a Freedom of Information Act request (5 U.S.C. § 552) for any and all documents regarding documents related to USEPA Ethylene Oxide presentations in South Carolina. Due to the urgent nature of the ongoing respiratory risks, we request an expedited response (40 CFR § 2.104(f)).

EPA's correspondence with South Carolina residents is summarized as follows:

Region 4 attended a public meeting in Charleston, South Carolina, with residents living near another high-priority facility. At this meeting, the chief of the Bureau of Air Quality from the South 2 EPA, Risk Communication in Action—the Risk Communication Workbook, EPA/625/R-05/003, August 2007; and EPA, Risk Communication in Action—the Tools of Message Mapping, EPA/625/R-06/012, August 2007. 20-N-0128 9

We are requesting presentation materials, correspondence with local officials, and any meeting summaries, for the meeting.

We also request that processing fees be waived because HealthyGulf is primarily interested in public dissemination of this information so that we can inform the public about the nature of health impacts of ethylene oxide and the increasing risks, and because the request is not primarily in the commercial interest of the requestors. See 40 CFR § 2.107(b)(5), § 2.107(c)(ii). We have attached a letter requesting a fee waiver (Attachment A) that documents our entitlement under the regulations.

We would prefer your response to be in electronic form, or in the form of a Compact Disc (CD), if possible<sup>2</sup>. Please contact me if that is unavailable. For any other information that may be needed, please contact Scott Eustis at **504-525-1528 ext. 212**, or by e-mail at [scott@healthygulf.org](mailto:scott@healthygulf.org).

For a healthy Gulf,

A handwritten signature in black ink, appearing to read "Scott Eustis".

Scott Eustis  
Community Science Director 504 525 1528 x212, [scott@healthygulf.org](mailto:scott@healthygulf.org)

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<sup>1</sup> HealthyGulf is a network of local, regional, and national environmental and public interest groups dedicated to uniting and empowering people to protect and restore the natural resources of the Gulf Region.

<sup>2</sup> See 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.")

## ATTACHMENT A

FOIA Officer  
U.S. EPA, Region 4  
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)  
Atlanta, GA 30303-8960  
(404) 562-9891  
r4foia@epa.gov

Re: **Fee Waiver: Freedom of Information Act Request for Documents related to USEPA Ethylene Oxide presentations in Illinois, Missouri, and South Carolina**

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, HealthyGulf has submitted a FOIA request for any and all documents regarding documents related to USEPA Ethylene Oxide presentations in Illinois, Missouri, and South Carolina.

This letter is attached to the 9 April, 2020 FOIA requests submitted on behalf of HealthyGulf in order to supplement the fee waiver request within. Below, we address the criteria for fee waivers under USEPA regulations. See 40 CFR § 2.107(b)(4)(5), 40 CFR § 2.107(d)(1). The USEPA is required to furnish records responsive to a request without charge or at a reduced rate when the following three factors are satisfied:

- (1) disclosure of the requested information would shed light on the operations or activities of the government;
- (2) disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities;
- (3) the disclosure [is not] primarily in the commercial interest of the requester. 40 CFR § 2.107(d)(1).

We believe the information herein fully satisfies these fee waiver requirements, and all fees should be waived.

First, "[d]isclosure of the requested information would shed light on the operations or activities of the government." See 40 CFR § 2.107(l)(2)(i). The EPA is responsible for evaluating risks of air pollutants like ethylene oxide under the Clean Air Act. Therefore our request directly and clearly concerns identifiable operations and activities of the federal government.

Second, "[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities." See 40 CFR § 2.107(l)(2)(ii)(iii). Disclosure of the information will significantly contribute to the public's understanding of the impacts of ethylene oxide, and its compliance with CAA and NEPA. As these records are not already in the public domain, they will contribute new and significant information to public understanding of this process. See 40 CFR § 2.107(l)(2)(iii). In addition, the disclosure of the requested records will contribute to an understanding of the health impacts of Ethylene Oxide for a "reasonably broad portion audience of persons interested in the subject" as opposed to the requesters alone. See 40 CFR § 2.107(l)(2)(iii). HealthyGulf is a regional non-profit, charitable organization that has spent years promoting the public interest through

the development of policies that provide enhanced environmental protection, and has routinely received fee waivers under FOIA. This is in large part because our organization has repeatedly proven its ability to disseminate the information it obtains through FOIA to large segments of the public by means of membership correspondence, multiple publications, our website (<http://healthygulf.org>) which is visited by millions of people each year, numerous educational programs and media initiatives, and congressional testimony. We intend to use many of these means to educate the public concerning the information contained in the records requested here, a matter of great interest and importance to all Americans. We plan to disseminate the information at our own expense.

Third, “[t]he disclosure [is not] primarily in the commercial interest of the requester.” See 40 CFR § 2.107(i)(3). HealthyGulf has no commercial interest in the information requested. The organization is a non-profit, charitable organization and the information would primarily be used to educate the public about activities of the government. “Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal quotations omitted). “When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, [the Agency] should rule in favor of the requester.”. Our interest in obtaining the requested materials is to serve the public interest by disseminating information about the process the federal government undertakes to comply with CAA and NEPA.

For the foregoing reasons, it is clear that the disclosure of the information requested is in the public interest because it is likely to contribute significantly to the public’s understanding of 404 Clean Water Act permit compliance. The public unquestionably will be the primary beneficiary of this requested information.

Therefore, please waive all processing and copying fees as the above satisfies the requirements of 40 CFR § 2.104.

Please provide the records described in our 9 April, 2020 letter. Nothing in this letter will constitute any waiver of our right to seek administrative or judicial review of any denial of our fee waiver request.

If you have any questions, please contact me immediately at 504-525-1528 ext. 212, or by e-mail at [scott@healthygulf.org](mailto:scott@healthygulf.org). Thank you for your assistance. I look forward to your prompt response.

With Kind Regards,

A handwritten signature in black ink, appearing to read "Scott Eustis", written in a cursive style.

Scott Eustis  
Community Science Director  
504 525 1528 x212, [scott@healthygulf.org](mailto:scott@healthygulf.org)